

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 1, 2003

**WATKINS, McGUGIN, McNEILLY & ROWAN, PLLC
v. ADEDAMOLA O. ONI, M.D.**

**Appeal from the Chancery Court for Davidson County
No. 01-2845-I Irvin H. Kilcrease, Chancellor**

No. M2002-01621-COA-R3-CV - Filed August 25, 2003

Law firm brought suit in 2001 against former client to recover payment for services. The client argued that the law firm represented him on several different matters, the oldest of which was beyond the six year statute of limitations in Tenn. Code Ann. § 28-3-109 and therefore recovery by the law firm was precluded. After a bench trial, the trial court found that the law firm had represented the client continuously from 1991 to 1998 and that the six year statute of limitations did not preclude recovery. The trial court entered a judgment against the client for the amount of attorney's fees owed plus prejudgment interest. The client appealed. Because the evidence does not preponderate against the trial court's findings, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and WILLIAM C. KOCH, JR., J., joined.

Michael V. Thompson, Nashville, Tennessee, for the appellant, Adedamola O. Oni, M.D.

Mark J. Downton, Nashville, Tennessee, for the appellee, Watkins, McGugin, McNeilly & Rowan, PLLC.

OPINION

In September of 2001, Watkins, McGugin, McNeilly & Rowan, PLLC, a Nashville law firm, brought suit against Adedamola Oni, M.D. for the balance due on his account in the amount of \$19,329.14 for representation occurring between 1991 and 1998. The firm had successfully represented Dr. Oni in getting his medical license reinstated and securing hospital privileges for him at two Chattanooga hospitals. The complaint was accompanied by an affidavit from Mr. Frank Scanlon, the attorney who represented Dr. Oni, verifying the amount of the indebtedness. Dr. Oni

answered, arguing that he was not indebted to the law firm and that in any event the statute of limitations in Tenn. Code Ann. 28-3-109 barred any recovery to which the law firm was entitled.

After a bench trial, the trial court determined that Watkins, McGugin, McNeilly & Rowan, PLLC was entitled to a judgment against Dr. Oni for \$19,329.14 plus prejudgment interest from December 1999 through May 2002 in the amount of \$5,154.44, for a total judgment of \$24,483.58 plus costs.

Dr. Oni appeals, making the same arguments that he did before the trial court: first that he had two separate agreements with Mr. Scanlon - one in which Mr. Scanlon would represent him for the purpose of reinstating his medical license and one in which Mr. Scanlon would represent him for the purpose of securing privileges at two Chattanooga hospitals. Secondly, Dr. Oni argues that the statute of limitations in Tenn. Code Ann. § 28-3-109¹ precludes any recovery by the law firm. Dr. Oni specifically argues that because he did not make any payments on the account between 1991 and 1996 the firm should have known after a few years of nonpayment that he was in breach of the contract, that the six year statute of limitations began to run at that time, and that he is not responsible for payment of any monies to Watkins, McGugin, McNeilly & Rowan, PLLC for work done from September 1991 to September 11, 1995.

Watkins, McGugin, McNeilly & Rowan, PLLC, on the other hand, argue that their services for Dr. Oni were continuous beginning in 1991, rendered under one continuing contract and, therefore, their cause of action accrued when their services were completed or terminated, in 1998, and that the statute of limitations does not preclude recovery for the fees owed by Dr. Oni because they brought suit in 2001, well within the six year statute of limitations.

Pursuant to the Tennessee Rules of Appellate Procedure, our review of this record is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of factual findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Cross v. City of Memphis*, 20 S.W.3d 642, 643 (Tenn. 2000).

The evidence shows that Dr. Oni contacted Mr. Scanlon in 1991 in regard to representation for the purpose of reinstating his license to practice medicine. Mr. Scanlon undertook the representation of Dr. Oni. There was no written representation agreement between Dr. Oni and Mr. Scanlon. Mr. Scanlon quoted Dr. Oni a \$100 hourly rate and required Dr. Oni to pay a \$1,000 retainer fee. Dr. Oni paid that fee as reflected in a letter dated July 12, 1991. Dr. Oni denied paying that \$1,000 payment and testified that Mr. Scanlon's work was to be performed on a *pro bono* basis.² Dr. Oni made an additional payment of \$350 to Mr. Scanlon in April of 1993 for copies.

¹Tenn. Code Ann. § 28-3-109 states, in pertinent part: "(a) The following actions shall be commenced within six (6) years after the cause of action accrued: . . . (3) Actions on contracts not otherwise expressly provided for."

²Mr. Scanlon only performs *pro bono* work through the Nashville Bar Association's *pro bono* program. Dr. Oni testified that he did not go through that program to hire Mr. Scanlon.

During the next few years, Mr. Scanlon attended several hearings before the licensing board, the Davidson County Chancery Court, and the hospital fair hearings committee on Dr. Oni's behalf. Mr. Scanlon also coordinated efforts with the Tennessee Medical Foundation, often making telephone calls to carry out that task. As a result of Mr. Scanlon's efforts, Dr. Oni's unrestricted medical license was reinstated in July of 1996 (according to Mr. Scanlon) or September of 1995 (according to Dr. Oni).

In October of 1996, Dr. Oni sought help from Mr. Scanlon in gaining hospital privileges at two Chattanooga hospitals in addition to the one at which he already had privileges. Dr. Oni testified that he thought the hospital matters were separate matters for which he would pay Mr. Scanlon \$1,000 per matter. Mr. Scanlon testified that he rarely takes cases on a flat fee basis and that he did not open a new file for the hospital privileges, but understood them to be a continuation of his existing representation of Dr. Oni. Mr. Scanlon also testified that he would never have agreed to take a \$1,000 payment for representation which would require him to travel to Chattanooga. Irreconcilably, Dr. Oni testified he thought there were three separate privilege matters. He made four separate \$1,000 payments in April, June, July, and September of 1997. In December of 1999, Dr. Oni made another \$1,000 payment which he claimed was a Christmas gift.

From 1991 onwards, Mr. Scanlon regularly sent bills to Dr. Oni. Throughout the representation of Dr. Oni, Mr. Scanlon maintained computerized billing. Each bill included Mr. Scanlon's hourly rate, an itemized description of the charges and services, the payments made to date by Dr. Oni, and a running total of the indebtedness. The record includes billing statements from January 30, 1992, April 19, 1995, May 20, 1996, January 28, 1997, May 30, 1997, June 30, 1997, July 31, 1997, September 27, 1997, September 11, 2001, as well as several letters regarding nonpayment of the account. Mr. Scanlon stated he did not more aggressively pursue collection while he was trying to get Dr. Oni's license reinstated because he knew Dr. Oni was having financial difficulties then.

Dr. Oni testified that he was under the assumption that Mr. Scanlon was performing the work on a *pro bono* basis. Dr. Oni denies receiving any of these invoices or letters mentioning payment on the account. However, he admitted that the addresses to which the bills and letters requesting payment were mailed were his valid mailing addresses at that time. He also admitted that he received every other piece of correspondence from Mr. Scanlon at those addresses pertaining to the efforts to reinstate his medical license and secure hospital privileges, but asserted that he failed to receive information regarding billing.

The trial court's memorandum made the following findings of fact and conclusions of law:

The Plaintiff began its representation of the Defendant in 1991. Frank J. Scanlon, Esq. performed the legal services for the Defendant on behalf of the Plaintiff.

In a letter dated July 12, 1991, the Plaintiff notified the Defendant that it was in receipt of his \$1,000 retainer fee, and that this payment would be applied to future billings.

Accordingly, the Plaintiff billed the Defendant at an hourly rate of \$100 per hour on a regular basis.

The Plaintiff kept a detailed billing of services rendered to the Defendant during the course of its representation.

The Defendant did not contest these services or the amount of time necessitated to execute said services.

The Defendant made periodic payments of \$1,000 on his bill balance, and made his last payment of \$1,000 to the Plaintiff in December of 1999.

The Plaintiff's billing statement shows that the Defendant has a remaining balance of \$19,329.14.

. . . The Defendant offered no credible evidence showing that the legal services rendered to reinstate his medical license constituted a separate and single legal transaction completed in 1994. The evidence at trial supports that the Plaintiff's representation of the Defendant started in 1991 and ended in 1998, and the Defendant made his last payment to the Plaintiff in December of 1999 for legal services. Therefore, this Court finds that the Plaintiff filed its claim for attorney's fees within the prescribed statute of limitations. Accordingly, Defendant's statute of limitations argument is without merit.

. . . .

The evidence does not support that the Plaintiff entered into a pro bono arrangement and a flat fee agreement with respect to the reinstatement of the Defendant's medical license and restoring his hospital privileges. The Plaintiff regularly billed time for each service to the Defendant during the course of representing him. The Defendant does not dispute the reasonableness or validity of the services set forth in the Plaintiff's billing statement. The Plaintiff has shown by a preponderance of the evidence that its representation of the Defendant constituted a single continuous legal transaction constituting a future billing arrangement, and that the Defendant failed to render payment for the remainder of his bill totaling \$19,329.14. Accordingly, the Plaintiff is entitled to a judgment in the amount of \$19,329.14 plus prejudgment interest from December of 1999 through May of 2002.

The evidence does not preponderate against the trial court's findings. They are fully supported by the record. To the extent those findings rely on credibility determinations, in a nonjury case, the weight, faith and credit to be given to a witness' testimony lie in the first instance with the trial judge who has the opportunity to observe the manner and demeanor of the witnesses as they testify. *Roberts v. Roberts*, 827 S.W.2d 788, 795 (Tenn. Ct. App. 1991); *Weaver v. Nelms*, 750 S.W.2d 158, 160 (Tenn. Ct. App. 1987). Because the trial judge is in a better position to weigh and evaluate the credibility of the witnesses who testify orally, we give great weight to the trial judge's findings on issues involving credibility of witnesses. *Randolph v. Randolph*, 937 S.W.2d 815, 818 (Tenn. 1996); *Town of Alamo v. Forcum-James Co.*, 205 Tenn. 478, 327 S.W.2d 47 (1959); *see Sisk v. Valley Forge Ins. Co.*, 640 S.W.2d 844 (Tenn. Ct. App. 1982).

Based upon the facts as found by the trial court and supported by the record, the law firm was entitled to the amount owed under the contract. "When services are to be performed over an extended period of time under an express or implied contract that does not fix a term of employment or a time when compensation is to be paid, the statute of limitations begins to run only when the services are fully performed or employment is otherwise terminated." *Jahn & Jahn, Attorneys v. Square Enters., Inc.*, No. 03A01-9604-CH-000167, 1996 WL 599705, at * 3 (Tenn. Ct. App. Oct. 21, 1996) (perm. app. denied Apr. 7, 1997) (finding that statute of limitations did not preclude collection of attorney's fees when employment of attorney by client was continuous over a period of years) (citing *Murray v. Grison*, 209 S.W.2d 888 (Tenn. Ct. App. 1956)).

We affirm the decision of the trial court and remand the case for any further proceedings which may be necessary. Costs of the appeal are taxed to Adedamola O. Oni, M.D.

PATRICIA J. COTTRELL, JUDGE